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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re:
WHITTAKER, CLARK & DANIELS,
INC.

PETER PROTOPAPAS,

Appellant.

v. WHITTAKER, CLARK & DANIELS, INC., Appellee.	Civil Action No. 3:23-cv-04151- ZNQ
OFFICIAL COMMITTEE OF TALC CLAIMANTS, Appellant. v. WHITTAKER, CLARK & DANIELS, INC., Appellee.	Civil Action No. 3:23-cv-04156- ZNQ

ASSENTED-TO JOINT MOTION TO CONSOLIDATE APPEALS

Appellants Peter Protopapas, in his capacity as court-appointed receiver (the “Receiver”) of Whittaker, Clark & Daniels, Inc. (“WCD”), and the Official Committee of Talc Claimants of WCD and its affiliated debtors and debtors-in-possession (the “Committee” and collectively with the Receiver, the “Appellants”) jointly move this Court, pursuant to Fed. R. Civ. P. 42(a) and Fed. R. Bankr. P. 8003(b)(2), to consolidate the above-captioned appeals: (1) Civil Action No. 3:23-cv-04151-ZNQ, by the Receiver; and (2) Civil Action No. 3:23-cv-04156-ZNQ, by the Committee. WCD, as appellee, has assented-to this motion and the consolidation of the appeals.

Pursuant to Federal Rule of Civil Procedure 42, if actions before a court involve a “common question of law or fact,” a court may consolidate the actions, join for hearing or trial any or all of the matters at issue in the actions, or issue any other orders to “avoid unnecessary cost and delay.” *See Ellerman Lines, Ltd. v. Atlantic & Gulf Stevedores, Inc.*, 339 F.2d 673, 675 (3d Cir. 1964). Similarly, under Federal Rule of Bankruptcy Procedure 8003(b)(2), when parties have separately filed notice of appeals, discretion is given to the Court to “join or consolidate” filed appeals. When exercising this discretion, a court should weigh the benefits of judicial economy against the potential for new delays, expense, confusion or prejudice. *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp. et al.*, 149 F.R.D. 65, 80 (D.N.J. 1993).

Consolidation is warranted here because the appeals by the Receiver and the Committee are identical. Both appeals challenge the *Order Denying Motion to Dismiss* [Case No. 23-13575, Dkt. No. 211] entered by the U.S. Bankruptcy Court for the District of New Jersey, are based on the same joint designation of items to be included in the record on appeal [Bankr. Dkt. Nos. 287, 342], and require adjudication of the same issues of law set forth in the joint statement of issues on appeal [Bankr. Dkt. No. 288]. The Appellants intend to file joint briefs and as noted above WCD, as appellee, consents to consolidation.

CONCLUSION

For the foregoing reasons, the Appellants respectfully request that this Court consolidate Civil Action No. 3:23-cv-04151-ZNQ and Civil Action No. 3:23-cv-04156-ZNQ.

Dated: August 23, 2023

Respectfully submitted:

/s/ Harvey Bartle IV

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